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Sent: Tuesday, October 30, 2012 4:11 PM
To: Leland, David@Waterboards; Zabinsky, Ben@Waterboards; Fitzgerald, Rebecca@Waterboards; Blatt, Fred@Waterboards
Cc: Alan Levine; Andrew Orahoske; Chris Malan; Crystal Bowman; Daniel Myers; David Keller; Diane Beck; Don and Sharon Gillespie; Don McEnhill-Russian RK; Eileen Cooper; Erica Terence; Joe Gillespie; Karuna Greenberg; Ken Fetcho; Ken Norton; Kim Matsen-QVIR; Konrad Fisher - KRK; Luna Latimer; Iyra cresse; Patrick Higgins; Petey Brucker; Scott Greacen; Vivian Halliwell; Will Harling
Subject: My comments and suggestions for Draft
Attachments: Draft Conditional Waiver Language_F's edits.doc

Dear NCWQCB Folks,

Attached is a copy in word of the Draft Conditional Waiver Language which you distributed for comment at the October Sub-committee meetings with my suggestions for changes in language and my comments added. I used Track Changes in Word to make comments and suggest changes in the language.

You will note in my comments that I do not think use of imprecise language and terms - including the terms "minimize", "to the extent practicable" and "adjascent" - is proper for a regulation which is intended to be enforceable. Such imprecise terminology is unenforceable; it also opens the path to abuse of discretion by staff. Because it is not enforceable, such language does not comply with applicable water codes, including Water Code 13242.

As I have puzzled over the proper way to bring agricultural pollution under control, I am mindful that most North Coast waterbodies are already impaired and that agricultural pollution is a major cause of many (most?) of the impairments. I have come to the tentative conclusion that discharge of the pollutant for which a water body is listed as impaired should not be allowed under this permit. I question whether that would be legal, i.e. would comply with applicable law, regulation and guidance (the non-point policy: "**Implementation programs must, at a minimum, address NPS pollution in a manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements.**").

The test I must apply is whether the staff's proposal "achieves and maintains water quality objectives." I find the draft you distributed wanting in that regard.

As a result, the approach I have taken in my comments and suggestions is that anyone who wishes to discharge under this general permit (waiver) must not discharge a pollutant for which the water body is listed as impaired. Anyone wishing to add to an impairment should, rather, be required to file a report of waste discharge and obtain a site-specific WDR or NPDES permit as appropriate.

This approach has the following advantages:

- It encourages an operator to not discharge pollutants which have caused impairment by requiring an individual site specific WDR for those who wish to discharge a pollutant which exacerbates an impairment.
- It solves the difficulty of constructing a permit which complies with WC 13242, the State Non-Point policy, etc.
- It is just: Operators in those watersheds where agriculture is a major cause of an impairment should face more stringent requirements if they choose to discharge a pollutant which will exacerbate the impairment and/or prevent/delay recovery of beneficial uses, aka attainment of water quality standards.

In this regard I would note that - since you have removed grazing from coverage under this waiver - the vast majority of the land regulated is/will be flat or low gradient land. On such lands it is relatively easy and cheap to prevent discharges, that is, pollution is controllable if the operator chooses to control it.

Felice

PS: At the sub-committee meeting you said you would send the language out in Word. As far as I can tell you have not yet done that. I copied the language out of the PDF you sent, pasted it into word, and then used Track Changes to comment and suggest language.

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"we must always seek the truth in our opponents' error and the error in our own truth."

- Reinhold Niebuhr